IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Appeal (L) No.484 of 2007
In
Company Petition No.31 of 2007

M/s. Atco Maart Limited. .. Appellant

Vs.

Mr.Premji N. Patel (H.U.F.) Karta .. Respondent

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Shri Rajesh Datar i/b Prashant Jadhav for the appellant.

None for the respondent.

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CORAM : R.M.S.KHANDEPARKAR &
D.G.KARNIK, JJ

DATED : 4TH JUNE, 2007

P.C.

1. Heard. The appellant challenges the order 12th April, 2007 passed by the Company Judge in Company Petition No.31 of 2007 whereby opportunity was given to the appellant to deposit a sum of Rs.3.58 lakhs within four weeks from the date of the order, failing which, the petition for winding up would be admitted. The Learned Company Judge has clearly observed in the impugned order that the fact that goods were sold, supplied and delivered has not been disputed and there was no grievance raised regarding

the price, quality or quantity of the goods supplied by the appellants immediately after the supply of the goods. Though no grievance was raised with regard to the price, quality or quantity of the goods supplied by the appellants immediately after the supply of the goods, since the defence in that regard is now sought to be raised, an opportunity will have to be given to establish the same and the same can be availed by the appellants in the proceedings which would be initiated by the respondents for recovery of the amount, and in order to enable the appellants to raise such defences and to establish their case, such opportunity has been accorded by the impugned order while directing the appellants to deposit the amount payable in relation to the goods supplied, as claimed by the respondents. In our considered opinion, there is no case made out for interference in the impugned order in this appeal, except extending the period for deposit of the said amount by four more weeks.

2. Once the records apparently disclose failure on the part of the appellants to raise defence or dispute regarding the price, quality or quantity of the goods supplied immediately after the supply thereof, it cannot be said that the Company Judge has acted illegally or arbitrarily in allowing the

appellants to deposit the entire amount claimed by the respondents leaving it open to the civil court to adjudicate upon the defences sought to be raised by the appellants. Considering the same, therefore, we do not find any case is made out for interference in the impugned order in this appeal, except extending the period for deposit of the amount till 2nd July, 2007. Consequently, the period of three months for allowing the original petitioner to file suit shall commenced from 2nd July, 2007.

3. With these observations, the appeal stands disposed of.

(R.M.S.KHANDEPARKAR, J)

(D.G.KARNIK, J)